

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL, 1998

BEFORE

THE HON'BLE MR.JUSTICE V.K.SINGHAL

WRIT PETITION NO:6148/1991

BETWEEN:

Sri.B.T.Shankar Hegde,  
C-511, Rajmahal Vilas Extn  
Bangalore-80.  
s/o late Tejappa Hegde. 68 years.

PETITIONER

(By Sri.Ramabhadran, Adv.,)

AND:

1. The Asst. Collector of Central Excise,  
Lalbagh Divn  
Bangalore.
2. The Collector of Central Excise(Appeals)  
121, Nungambakkam High Road,  
Madras.
3. The Collector of Central in Karnataka  
C.R. Building, Queen's Road,  
Bangalore-1.

(By Sri.Ashokharanahalli, CGSC)

4. The Chief Manager,  
Punjab National Bank,  
Hudson Circle,  
Bangalore- 560 027.

5. The Chairman and M.D.  
Punjab National Bank.  
Parliment Street,  
New Delhi. 110001.

RESPONDENTS

(By Sri. Ashokharanahalli, CGSC)

This petition is filed praying to direct the  
F.D. receipts forthwith.

This petition coming on for hearing this day,  
the court made the following:-

O R D E R -..

O R D E R

(63)

This petition has been filed <sup>praying to</sup> ~~restrain~~ the fourth respondent in making payment to R-1 and to return the fixed deposit receipts.

2. M/S.Hegde and Golay Ltd., was subjected to Central Excise Duty which was challenged by way of writ petition wherein the recovery proceedings were stayed subject to furnished security to the satisfaction of the Assistant Collector of Central Excise. Bank Guarantee was given in pursuance thereof. The counter bank guarantee was given by the present petitioner. The said writ petition was disposed of directing the adjudicating authority to ~~to~~ dispose of the matter. The order passed by the adjudicating authority was challenged by way of an appeal and the same was allowed on 9-5-1984 directing the <sup>authority</sup> adjudicating ~~to~~ examine the matter again. It has not come on record as to what further orders have been passed in pursuance of the order of the appellate authority. The bank ~~guarantee~~ was invoked on 21-3-1984 when the demand was existing against the Company. Subsequently the Company has gone in liquidation and the petitioner filed a civil suit in which the injunction was granted against the bank authorities.

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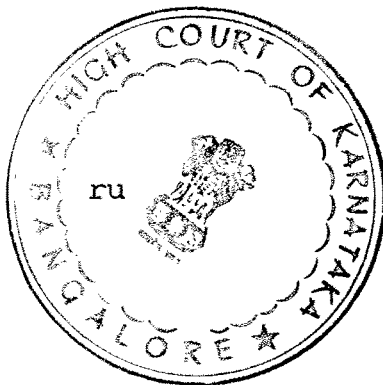
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3. On behalf of the Central Excise Department in it is stated that the matter of invoking the bank guarantee, this Court has no jurisdiction under Article 226. It is also stated that the appeal effect order has already been passed. It is stated, in this matter, <sup>that</sup> the civil suit filed by the petitioner was dismissed for default and the petitioner approached this Court by filing a writ petition thereafter. If there is a remedy or if the petitioner has once availed the remedy, it is not proper for him to approach this Court again invoking jurisdiction under Article 226 of the Constitution. The petition is liable to be dismissed on the ground of having availed the remedy and not pursuing it thereafter. The application for restoration of <sup>suit or</sup> appeal or other remedies could have been availed, but that was not done. The Bank guarantee when it was invoked by the Central Excise Department was perfectly within their jurisdiction and the demand was subsisting for which the bank authorities were under obligation to make payment. It is only by virtue of the injunction order that the fixed deposit which was furnished as a counter bank guarantee and converted into a pay order ~~but the same~~ could not be handed over to the Central Excise Department. Subsequently by an appeal

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the matter was remanded and what has happened thereafter is not known. The proper course for the petitioner now would be to approach the bank authorities for renewal of the fixed deposits as the money remained with them for all the time and then approach the Central Excise Department. Since the Company has also gone in liquidation, the Official Liquidator also needs to be approached in the matter. If there is any refund available from the Central Excise Department, the petitioner can approach the respondent Central Excise Department <sup>through official liquidator</sup> But no direction for refund can be given by this Court following *Dusseeh Sugar Industries Ltd. v. PHEW 1998 12 R Kar 1323K*. Petition stands disposed of with the above observations.



Sd/-  
JUDGE